REMARKS/ARGUMENTS

Reconsideration of this application, as amended, is respectfully requested. The informalities in claims 1, 15, 19 and 20 that were noted in the Office Action have been corrected.

The present claims are patentable over Santos et al., US Patent 6,684,247. Santos describes a system for identifying congestion within a network, in which values of network metrics are measured and used to create a model. This model is then used to estimate the state of the network. See Santos, Abstract, and col. 2, ll. 5 – 58. Importantly, during this process the measured values of the network metrics are arranged as a time series. See, e.g., Santos Figs. 6 and 8. These time series representations of the measured metric values are then used to create the model. See, e.g., Santos at Fig. 3 and col. 5, l. 13 – col. 6, l. 13.

In contrast, the present claims (1, 10 and 16) recite organizing packet round trip time measurements as an invariant distribution or deriving plots from such a distribution. A distribution of this type is not a time series (see, e.g., Specification at ¶ 46, "this invariant distribution is also termed a histogram"). To equate the two is error. For example, a distribution of RTTs includes no information regarding the sequence of measurements being made. A distribution simply includes measures of the number of occurrences of a particular value, in this case RTT. See, e.g., Fig. 5 of the present application. The same cannot be said for a time series of measurements which inherently includes information regarding the sequence in which measurements were made. Thus, while in some respects one could fashion an invariant time series of data (e.g., one which has regular periodicity), this would not be equivalent to an invariant distribution as recited in the present claims.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, USPQ2d 1051, 1053 (Fed. Cir. 1987). Here, it has been shown that Santos fails to teach a scheme wherein packet round trip times are organized as an invariant distribution or plots are derived from such a distribution. Hence, claims 1, 10 and 16 are patentable over Santos. All of the remaining claims depend from these independent claims and are therefore likewise patentable over this reference.

Claims 7 – 9, 13, 17 and 20 were rejected under 35 USC 103 as being obvious in view of Santos when considered in combination with Wilson, US 2001-0032269. Like Santos, however, Wilson fails to teach or suggest organizing packet round trip time measurements as an invariant distribution or deriving plots therefrom. Instead, at best, Wilson teaches only that the average and standard deviation of Round Trip Time (RTT) was measured using the Internet Engineering Task Force (IETF) recommended

algorithm. Consequently, even if Wilson can fairly be described as discussing the use of a TCP host to keep track of sent data packets, etc. as asserted in the Office Action, such a teaching when combined with Santos would still not yield the present invention. In particular, one of ordinary skill in the art would still be presented with Santos' use of time series organizations of data and not the invariant distributions of the present invention. Because of these significant differences between the present invention and the combined teachings of the cited references then, the present claims are patentable over the combination of Santos and Wilson.

If there are any additional fees associated with this communication, please charge Deposit Account No. 02-2666.

Respectfully submitted,
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